SUPREME COURT OF THE UNITED STATES.

No. 48.

JOHN WILCOX ET AL., PLAINTIFF IN ERROR,

VERSUS

THOMAS HUNT, CHESTER CLARK, & WELLS PHILLIPS, TRUSTEES, &c.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE EASTERN DIST. OF LOUISIANA.

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veyors in the discharge of their duties, and to provide for the punishment of persons who may prevent, or attempt to prevent, any surveyor from performing his duties as pointed out by this act, or who shall wilfully cut down and deface any marked trees, or remove any land mark which may be made in pursuance of this act; and to protect the Indians in the peaceable possession of their improvements and the lots on which the same may be situate, passed the 21st of December, 1830. And also an act, entitled "An act to amend the said act, passed on the 24th day of December, 1831. Also an act passed the 22d day of December 1830, to prevent the exercise of assumed and arbitrary power by persons under pretext of authority from the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid Territory; also an act more effectually to provide for the government and protection of the Cherokee Indians residing within the limits of Georgia, and to prescribe the bounds of their occupant claims; and also, to authorize grants to issue for lots drawn in the late land and gold lotteries in certain cases, and to provide for the appointment of an agent to carry certain parts thereof into execution, and to fix the salary of such agent, and to *permit* those persons who may deter Indians from enrolling for emigration, passed the 20th December, 1833. Because the said several acts are repugnant to the said treaties and laws of Congress, which according to the constitution of the United States, compose a part of the supreme law of the land; and this, he is ready to verify, wherefore he prays judgment, whether this court can or will take further cognizance of the action aforesaid.

GEORGIA, *Cass county:*

Personally appeared in open court, Johnson Pipe, who, being duly sworn, says, that the several matters and things contained in the foregoin plea are true in substance and in fact.

JOHNSON PIPE, his x mark.

Sworn in open court, this 18th September, 1834.

CHESTER HAWKS, *Clerk.*

GEORGIA, *Cass county:*

I, Chester Hawks, clerk of the superior court of said county, do testify, that the foregoing is a full exemplification of the proceedings had, and of record in my office in the case therein set forth, to wit: the State vs. Johnson Pipe, an Indian, (indictment simple larceny.)

Given under my hand and private seal, there being no public seal of office, this 18th day of October, 1834;

CHESTER HAWKS, *Clerk*, [L. S.]

GEORGIA, *Cass County:*

I, John W. Hooper, judge of the superior court in and for the Cherokee circuit of the State of Georgia, do hereby certify, that Chester Hawks, whose name appears to the above certificate as clerk, is clerk of the superior court in and for the county of Cass, and that full faith and credit ought to be had and given to his attestation as such, and that the same is in due form, this 17th day of October, 1834

JOHN W. HOOPER.

SUPREME COURT OF THE UNITED STATES.

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8.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

Be it remembered, that on the eighth day of July in the year of our Lord one thousand eight hundred and thirty-five, into the said court came Wells Phillips, Chester Clark, and Thomas Hunt, by their attorney, Greer B. Duncan, Esq. and filed the following petition, to wit:

To the honorable Samuel H. Harper, Judge of the District Court of the United States, in and for the Eastern District of Louisiana:

The petition of Thomas Hunt, merchant, a citizen of the State of New-York, residing in the city of New York, Wells Phillips, merchant, a citizen of the State of New-York, and Chester Clark, also a citizen of the State of New-York, residing in the city of New-York, trustees of Wells Phillips, Thomas Hunt & Co., Weyman, Clark & Co., Pinckney & Bertine, Luke Davies, Walter Jagger & Co., Arlondo Fish, W. & J. Vanbuskirk, H. Booraem & Co., Van Wyke & Phillips, Hustin Melvin & Co., James W. Pinkney, Mrs Alice Mead (executrix) and Manuel & Stout, creditors of John Wilcox and Jacob S. Baker: all of which said creditors are citizens of the State of New-York, and reside in the city of New York:

Respectfully represent, that John Wilcox, merchant, a citizen of the State of Louisiana, and residing in the city of New Orleans, within the jurisdiction of this honorable court, is justly indebted to your petitioners, as trustees of the before named persons, in the sum of twenty-five thousand two hundred and six dollars and eight cents, for this: that the said John Wilcox and one Jacob S Baker, of the firm of Wilcox & Baker, and John Wilcox in his individual capacity, being largely indebted to the above named persons of the city of New-York, proceeded during the past fall, to effect an arrangement for the security of the payment of the same, and did in the city of New-York on the 10th day of October A. D. eighteen hundred and thirty four, conclude a settlement, whereby your petitioners were mutually by all the respective parties appointed trustees, on behalf of the above-named creditors, to whom the said Wilcox was, and is indebted to the respective amounts hereinafter mentioned; in which settlement it was agreed among other things in substance, to wit: after providing that a portion of their claims should be paid in a particular manner, and that for the balance (the amounts and time of payment are all more particularly stated hereafter) it was stipulated that a bond and mortgage should be given by said Wilcox, on all the real estate belonging to him, on which he was in any manner interested in the city of New Orleans, for the amount of said creditors' claims and demands—which bond and mortgage it was therein provided should be given within fifty days from the first day of September, A. D. eighteen hundred and thirty-four, as collateral security for the payment of the promissory notes of the said John Wilcox, hereinafter described; and your petitioners aver, that the said promissory notes were given by the said John Wilcox, amounting in all to the sum of twenty-five thousand two hundred and six dollars eight cents, in the manner following, to wit:

To John Phillips.

One Note at 7 months for - -	$693 74
One Note at 9 months for - -	701 50
One Note at 15 months for - -	724 87
One Note at 18 months for - -	736 43
One Note at 21 months for -	748 08
One Note at 27 months for - -	771 32

To Thomas Hunt & Co.

One Note at 7 months for - -	$690 11
One Note at 9 months for - -	696 80
One Note at 15 months for - -	719 09
One Note at 18 months for - -	731 55
One Note at 21 months for - -	743 13
One Note at 27 months for - -	776 31

To Weyman, Clark & Co

One Note at 7 months for - -	$622 87
One Note at 9 months for - -	629 85
One Note at 15 months for - -	650 79
One Note at 18 months for - -	661 26
One Note at 21 months for - -	671 73
One Note at 27 months for - -	692 67

To Pinkney and Bertine.

One Note at 7 months for - -	$424 05
One Note at 9 months for - -	428 78
One Note at 15 months for - -	443 05
One Note at 18 months for - -	450 18
One Note at 21 months for - -	457 31
One Note at 27 months for - -	471 57

To Luke Davies.

One Note at 9 months for - -	$137 11
One Note at 15 months for - -	141 67
One Note at 24 months for - -	146 23

To Walter Jagger & Co.

One Note at 16 months for - -	$201 25

To James W. Pinkney.

One Note at 14 months for - -	$742 61

To Arlando Fish.

One Note at 7 months for - -	$282 03
One Note at 9 months for - -	284 19

One Note at 15 months for	-	-	293 67
One Note at 18 months for	-	-	298 41
One Note at 21 months for	-	-	303 15
One Note at 27 months for	-	-	312 65
One Note at 9 months for	-	-	129 68
One Note at 15 months for	-	-	133 99
One Note at 21 months for	-	-	138 30

To W. & J. Van Buskirk.

One Note at 7 months for	-	-	$294 60
One Note at 9 months for	-	-	297 90
One Note at 15 months for	-	-	307 80
One Note at 18 months for	-	-	312 75
One Note at 21 months for	-	-	317 70
One Note at 27 months for	-	-	327 60

To H. Booraem & Co.

One Note at 7 months for	-	-	$134 22
One Note at 9 months for	-	-	135 72
One Note at 15 months for	-	-	140 23
One Note at 18 months for	-	-	142 49
One Note at 21 months for	-	-	144 75
One Note at 27 months for	-	-	149 26

To Van Wyck & Phillips.

One Note at 7 months for	-	-	$134 08
One Note at 9 months for	-	-	135 58
One Note at 15 months for	-	-	140 08
One Note at 18 months for	-	-	142 23
One Note at 21 months for	-	-	144 38
One Note at 27 months for	-	-	149 08

To Austin Melvin & Co.

One Note at 7 months for	-	-	$155 96
One Note at 9 months for	-	-	157 70
One Note at 15 months for	-	-	162 94
One Note at 18 months for	-	-	165 56
One Note at 21 months for	-	-	168 18
One Note at 27 months for	-	-	173 42

To Alice Mead (Executrix.)

One Note at 7 months for	-	-	$203 33
One Note at 9 months for	-	-	205 61
One Note at 15 months for	-	-	212 45
One Note at 18 months for	-	-	$215 87

One Note at 21 months for - -	219 29
One Note at 27 months for - -	226 13

To Manuel & Stout.

One Note at 7 months for - -	$80 13
One Note at 9 months for - -	81 03
One Note at 15 months for - -	83 72
One Note at 18 months for - -	85 06
One Note at 21 months for - -	86 40
One Note for 27 months for - -	89 09

All of which said several notes before mentioned and described, being in all seventy-four, are each dated in New-York, on the first day of September, A. D. eighteen hundred and thirty-four, and payable New Orleans, Louisiana, at the times respectively above specified, to the several individuals or firms respectively beforenamed; and all of which bear seven per cent. interest, as per the said written agreement, and all given for value received; all of which said several notes, together with the bonds, mortgage and agreement, the petitioners reserve to themselves the right of producing on the trial of this cause. And for the better security of the payment of the said money due the respective creditors, according to the true intent and meaning of the same, the said John Wilcox did make, execute and deliver to your petitioners, Thomas Hunt, Wells Phillips and Chester Clark, merchants of the city of New York, his certain mortgage on all the real estate belonging to him in the city of New Orleans, made and executed in the city of New-York, on the twenty-fifth day of October, eighteen hundred and thirty-four, before Geo. N. Titus, Commissioner of Deeds of the city of New-York, in due form according to the laws of said state, and among other property mentioned in said mortgage, there were six certain lots of ground specially mentioned, situate in the suburb St. Mary, in the square comprised between Baronne, Phillippi, Gravier and Common streets, and marked *one*, *ten*, *eleven*, *twelve*, *sixteen* and *seventeen*, on a plan drawn by the city surveyor, and annexed to an act passed before F. De Armas, notary public, on the eighteenth day of April eighteen hundred and thirty-one (1831) and a full, complete and specific description of which is given in said act of mortgage, subsequently recorded in the office of Carlile Pollock, notary public of this city, and recorded according to law in the office of the recorder of mortgages in and for the parish and city of New Orleans, and which your petitioners reserve to themselves the privilege of introducing on the trial, which said act of mortgage was signed by said Wilcox and your petitioners.

And your petitioners further represent: that Richard O. Pritchard of this city, in whose favor the said Wilcox had previously executed a mortgage on his said real estate in this city and parish of New Orleans, including the aforesaid six lots of ground, on or about the 25th day of November, A. D. 1834, applied to the Judge of the parish court of the parish and city of New Orleans, and obtained an order of seizure and sale of said mortgaged premises; and the same was duly seized and sold by the sheriff of said parish

on or about the 12th day of January 1835, for the sum of twenty-four thousand six hundred dollars; and Alfred Hennen and Levi Pierce, Esqrs. became the purchasers thereof, and the said Pritchard's claim amounting to the sum of fifteen thousand dollars with interest at the rate of ten per centum per annum, from the 19th day of November 1834, with costs of suit, were all paid, which left a balance of the purchase money of about $9164 12½.

Your petitioners furthermore represent: that the mortgage of the said Pritchard included the aforesaid six lots and one other only—and the same were sold and purchased as aforesaid; and the said Pritchard on or about the seventeenth day of January A. D. 1835, took a rule in the said parish court on Paul Tulane, who was acting as the attorney in fact of your petitioners, to show cause why the said mortgage made as aforesaid, in favor of your petitioners, should not be cancelled and raised by the sheriff, so far as it affected the property sold on his seizure, which rule was made absolute on the 19th day of January 1835, and the sheriff authorized to release and raise said mortgage, it being a subsequent mortgage; all of which was done accordingly, to enable the sheriff to make a clear title to the said purchasers, unincumbered by subsequent liens. And the sheriff did proceed and make to the purchasers a deed of conveyance, in which he sets forth, among other things, that he had received and acknowledges the receipt of sixteen thousand four hundred and fifty dollars ($16,450) and that he had left the balance of eight thousand one hundred and fifty (8150) in the hands of said purchasers, to be applied by them to the payment of the balance of a mortgage amounting to the sum granted originally for 16,300 by act passed before Felix de Armas, notary public of the city and parish of New Orleans, by the said John Wilcox, in favor of Elie Victor Jourdain and James B. Hullen, dated the 18th day of April 1831 on the said six lots beforementioned, and on which sum of $16,300, that of $8150 has been paid; all of which appears by the certificate of the recorder of mortgages of said parish; the balance of which, the said lots were sold subject.

Your petitioners further represent: that the aforesaid sum of sixteen thousand three hundred dollars secured by mortgage on the said six lots of ground in favor of Hullen and Jourdain, was payable by the said Wilcox, in four equal annual instalments of 4075 each, from the 18th day of April, A. D. 1831; and when the two first instalments respectively became due, they were paid, and the mortgage so far was raised, leaving the balance aforesaid of $8150, on which the said mortgage to Hullen and Jourdain subsisted as an unextinguished prior lien, as appeared by the certificate of the mortgage office; and this was the sum left in the hands of the purchasers to protect themselves against the supposed mortgage, and subject to which the said property was sold, whereas the fact is, as is now alledged by your petitioners, that the third enstalment of the said original mortgage to Hullen and Jourdain, amounting to one fourth part thereof, or the sum of $4075 due on the 18th and 21st of April 1834 (say eighteen hundred and thirty-four) was duly paid by said Wilcox at maturity, and many months before the seizure and sale of the said six lots; but the said Wilcox neglected to have the said mortgage raised and cancelled for said third instalment, and thus it remained at the said sheriff's sale shewing by the records of the recorder of mortgages that there yet at the time of said sale existed a prior mortgage of $16,300 one half of which only was paid, whereas there really only existed the sum

of four thousand and seventy-five dollars unpaid; and the said purchasers were only entitled to retain that sum in their hands instead of the amount actually retained, and which should have been paid to your petitioners as the next and only mortgagees, making the sum of five thousand eighty nine dollars twelve cents to which your petitioners are entitled instead of the sum of one thousand and fourteen twelve one-hundredths and to which they are entitled because of their privilege granted by the said mortgage to them by the said Wilcox, as aforesaid.

And they further represent: that although the said Wilcox neglected to have the mortgage granted to said Hullen and Jourdain raised so far as the said third instalment was concerned at the time when he paid the same and left it standing until after the sale of said property; yet, after the said sale he gave the said note to the said Alfred Hennen, Esq , to be by him cancelled and the mortgage raised, which has subsequently been done; and there remained no pretext why the said sum of four thousand and seventy-five dollars should not be paid to them as trustees of the aforesaid mortgage creditors.

Your petitioners further represent: that the same money, being the *the* balance of the purchase money left by the sheriff in the hands of the purchasers, yet remains in the hands of Alfred Hennen, Esq who refuses to pay the same to your petitioners, and upon which they have a special lien and privilege, it being money resulting from the sale of the aforesaid six lots of ground, and upon which they had a special mortgage as above set forth, and which should be appropriated to the payment of the mortgage granted in favor of your petitioners; for they aver, that there were no other lien or privilege upon said property at the time of the said seizure and sale, or at the time when the mortgage in favor of your petitioners was ordered to be raised and cancelled by the said parish court; except the one in favor of the said Pritchard, and the one granted in favor of the said Hullen and Jourdain, which latter really had only a claim of four thousand and seventy-five dollars and after the one with cash and interest in favor of said Pritchard is paid, and retaining only the said sum of $4075, your petitioners are entitled to the balance of the said purchase money applied towards extinguishing the said mortgage.

Your petitioners specially allege and aver, that they and each of them, and all the other creditors for whom they sue as trustees, are each and all of them citizens of the State of New-York, and reside in the city of New-York—and that the said John Wilcox, Alfred Hennen, James B. Hullen and Elie Victor Jourdain, are citizens of the State of Louisiana, residing in the city of New Orleans, and that your petitioners are entitled to the jurisdiction of this honorable court.

Wherefore may it please your honor to order that the said John Wilcox be cited to appear and answer this petition, and after all due proceedings had, that judgment be rendered against him in favor of your petitioners, as said trustees, for the amount on each respective note beforementioned, for the amount of the same, together with interest at the rate of seven per centum per annum, from their respective dates and on their respective amounts until paid, and costs of suit. And that the said E. V. *E. V.* Jourdain, James B. Hullen and Alfred Hennen, Esq. be made parties hereto, and that

they be ordered to answer and shew what cause they may have, why the said four thousand and seventy-five dollars, one moiety of the sum of eight thousand one hundred and fifty dollars left in the hands of the said Hennen and Pierce, by the sheriff, to pay the said Hullen and Jourdain, should not be paid to your petitioners by reason of the aforesaid premises; and they pray that your honor would so order the said sum of money to be paid to them by the said Hennen, in whose hands the said money now is, and that all such further orders be made herein, as may appertain to justice and equity; and they pray also for costs of suit and general relief, and as in duty bound they will ever pray, &c.

Signed GREER B. DUNCAN,
Attorney for Plaintiffs.

The above petition is endorsed as follows:

I accept service, and waive copy of petition. New Orleans, 28th November, 1835.

Signed JAMES B. HULLEN

Service of citation and petition waived and acknowledged.

Signed E. V. JOURDAIN.

Service accepted.

Signed A. HENNEN.

And on the 9th day of July, of the year aforesaid 1835, the following citation issued from the clerk's office, to wit:

The President of the United States of America, to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting: You are hereby commanded to summon John Wilcox, so that he be and appear at the District Court of the United States for the Eastern District of Louisiana, to be holden in the city of New Orleans on the second Monday of December, 1835, to answer to the complaint of Clark, Hunt and Phillips, trustees, &c. and that he do file his defence or answer, with the clerk of said court, on or before the same, or judgment will be given against him by default; and have you then and there this writ. Witness the honorable Saml. H. Harper, judge of the said court at the city of New Orleans, this 9th day of July, 1835, and 59th year of the Independence of the United States of America.

[SEAL.] Signed JAMES N. LEA,
Deputy Clerk.

Marshal's Return.

Received 17th July 1835, and on the 18th of same month as within commanded, I summoned John Wilcox by leaving copies of petition and the within citation at his domicil, in the hands of his clerk, C. Levy, a free white person above the age of 14 years. Returned 12 October, 1835.

Signed L. C. BACON,
U. S. Deputy Marshal.

And afterwards, on the 14th day of December 1835, one of the defendants, John Wilcox, came into court by his attorney, John McHenry, Esq, and filed the following prayer, to wit:

U. S. District Court.

THOS. HUNT, PHILLIPS & CLARK
vs.
JOHN WILCOX. } No. 3648.

The defendant by his counsel John McHenry, comes into court and craves oyer of the promissory notes sued on, in the above entitled suit, together with the bond and obligations, mortgages and all other papers and documents referred to in the petition presented by the plaintiffs, or hence to be dismissed with costs, defendant being unable to answer without first seeing said notes, mortgages, papers, &c.

Signed JNO. McHENRY,
Counsellor for Deft.

And afterwards, on the 17th day of December, in the year 1835, one of the defendants, Alfred Hennen, came into court and filed the following answer, to wit:

THOS. HUNT and others
vs
JOHN WILCOX and others. } No. 3648.

U. S. Dist. Court, La. Dist.

And now Alfred Hennen, one of the defendants in the aforesaid case, appears, answers, and says: That true it is, he purchased the property in the petition mentioned, but denies that the plaintiffs have any claim or demand on this defendant, and for trial, puts himself on the country.

Wherefore he prays to be dismissed with costs.

Signed ALFRED HENNING.

And afterwards, on the 18th day of December 1836, one of the defendants E. V. Jourdain, by his attorney John McHenry, came into court and filed the following answer, to wit:

To the honorable Samuel H. Harper, judge of the United States Court in and for the eastern district of Louisiana:

The answer of E. V. Jourdain, a citizen residing in the city of New Orleans, to the petitioner presented in this honorable court by Thomas Hunt, Wells Phillips and Chester Clark, against John Wilcox, in which your respondent is made a party, and cited to appear,

Respectfuly shows: That he denies all and singular the allegations set forth in said petition, tending to charge or render him liable or lay him under any obligations to any of the parties in any manner or form; and also denies that the said plaintiffs have any right to join him in this suit.

Wherefore he prays to be hence dismissed with cost.

Signed McHENRY,
For Defendant.

And on the same day one of the defendants, J. B. Hullen, came into court by his attorney, John McHenry, Esq., and filed the following answer, to wit:

To the honorable Samuel H. Harper, judge of the United States Court, in and for the eastern district of Louisiana.

The answer of James B. Hullen, a citizen of New Orleans, to the petition filed in the honorable court by Wells Phillips, Chester Clark, and Thomas Hunt, against John Wilcox, in which your respondent is made a party, and cited to appear, respectfully shows:

That he denies all and singular the allegations set forth in said petition, tending to charge or render him liable, or lay him under any obligations to any of said parties, in any form or manner; and also denies that the plaintiffs have any right to join him in this suit: Wherefore he prays for general relief and to be hence dismissed with costs.

And in duty bound, &c.

Signed McHENRY,
For Deft.

And afterwards, on the 29th day of December, 1835, the plaintiff came into court, and filed the following document and notes, to wit:

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known, that this day before me, Carlile Pollock, a notary public, in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared Paul Tulane of this city, merchant, the substituted attorney of Messieurs Chester Clark, Thomas Hunt and Wells Phillips, all of the city of New-York, trustees of the creditors of John Wilcox and Jacob S. Baker, merchants, and heretofore co-partners trading at said city of New-York, under the firm of Wilcox & Baker, and in this city under the firm of John Wilcox and company.

Which appearer herein acting in his said quality, produced and exhibited unto me, certain documents written in the English language, and required of me to make record of the same in this my current register; and in compliance with said request, I have proceeded to make said record according to law, in manner and form following, viz:

"Whereas the creditors of John Wilcox and Jacob S. Baker, of the firm of Wilcox and Baker, and of John Wilcox in his individual capacity, have appointed Chester Clark, Thomas Hunt and Wells Phillips, of the city of New-York, merchants, trustees of the said creditors, to effect a settlement with the said John Wilcox and Jacob S. Baker: Now, know ye, that we, Chester Clark, Thomas Hunt and Wells Phillips, trustees as aforesaid, and parties hereto, of the first part, for the considerations hereinafter mentioned, do covenant and agree to and with the said John Wilcox and Jacob S. Baker, severally and respectively with the said firm, that we will accept at any time within fifty days, from the above named John Wilcox and Jacob S. Baker, or either of them, in negotiable paper and bills receivable, which

they may turn out as the proceeds of their business, to the extent in nominal amount of at least seven shillings in the pound, to be endorsed by them; and also a bond and mortgage on all the real estate belonging to the said John Wilcox, or in which he is interested, in New Orleans, for the balance of the amount of such creditors claims and demands over such sum as shall be turned out in negotiable paper and bills receivable, endorsed as aforesaid, which said bond and mortgage shall also be given within the said fifty days, as collateral security for the promissory notes of the said John Wilcox, to be made as hereinafter provided; and the said John Wilcox and Jacob S. Baker, jointly and severally covenant and agree to turn out and give such negotiable paper and bills receivable within the said fifty days; and the said John Wilcox, on his part also covenants and agrees to give such bond and mortgage within the same time; in consideration of which and of one dollar to the said parties of the first part, in hand and truly paid, at, or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part do covenant and agree to and with the said John Wilcox and Jacob S. Baker severally and respectively and with their said firm, as follows, that is to say, that they will accept and receive such negotiable paper and bills receivable, endorsed by the said John Wilcox and the said Jacob S. Baker, to the extent of seven shillings in the pound, and upwards; and that they will also accept and receive the promissory notes of the said John Wilcox, secured by the said bond and mortgage, for such balance in satisfaction and settlement of the several and respective claims and demands of the said creditors, which last mentioned notes are to be given to the creditors respectively by their respective balances, at seven, nine, fifteen, eighteen, twenty-one and twenty-seven months, from the first day of September, 1834, payable in the city of New Orleans; which notes are to be payable with interest, at the rate of seven per cent. per annum; and the said bond and mortgage to be placed in the hands of the said parties of the first part, and the survivors of them as trustees as aforesaid, until redeemed, foreclosed or otherwise settled; and the said parties of the first part, agree to appoint and duly constitute Paul Tulane and Chas. Patterson of said New Orleans, or one of them, or some other suitable and proper person their attorney or substitute, or the attorney and substitute of said creditors, the better to enable the parties of the first part to carry the settlement into full and complete effect.

"It is understood and agreed between the parties to these presents, that notwithstanding the bond and mortgage so to be given as aforesaid, by the said John Wilcox, said John Wilcox is to be at liberty to renew the present encumbrances by mortgage or mortgages, if he thinks proper and feels himself constrained so to do; and such renewed mortgage or mortgages to have the same preference as they have now, in the same manner as if they were prior mortgages; and any certificate or writing to that effect, shall be given to the said trustees or the survivors of them or their attorney or substitute as may be necessary; and it is further agreed by and between the said parties hereto, that said Wilcox is to be at liberty to sell any part or portion of the real estate so placed under mortgage, on his paying to the said trustees or their attorney or substitute, a proportion of the purchase money equal to the proportion which the whole mortgaged security bears to the whole mort-

gage debt, and that thereupon the said parties of the first part, or their attorney or substitute shall release or extinguish their mortgage lien or incumbrance on such property so sold.

"And it is further understood and agreed, that the notes or bills receivable of the said firm of John Wilcox & Co., are to be placed, remain in the hands of the said trustees for collection, who are to make distribution to and among the said creditors pro rata as the said trustees shall be in funds for that purpose; but that the other notes and bills receivable, shall be passed over to the said creditors for their use and benefit. It is further understood, that the fifty days beforementioned, are to commence running from the eleventh day of September last. In witness whereof the parties to these presents have hereunto interchangeably set their respective hands and seals, this 10th day of October, A. D. 1834.

Signed
"CHESTER CLARK. [SEAL.]
"THOS HUNT. [SEAL.]
"WELLS PHILLIPS. [SEAL.]
"JOHN WILCOX. [SEAL.]
"JACOB S. BAKER. [SEAL.]

Signed, sealed and delivered in the presence of
ELIAS H. ELY,
JOHN M PLATT.

CITY AND COUNTY OF NEW YORK, *ss.*

"On this twenty-fifth day of October, one thousand eight hundred and thirty-four, before me, the subscriber, personally appeared Elias H. Ely, of the city of New-York, counsellor at law, who being by me duly sworn, said that he knew Chester Clark, Thomas Hunt, Wells Phillips, John Wilcox and Jacob S. Baker, who were then present, to be the individuals described in, and who executed the foregoing agreement; and the said Chester Clark, Thomas Hunt, Wells Phillips, John Wilcox and Jacob S. Baker, each respectively acknowledged that he executed the said instrument, for the purposes therein mentioned.

Signed "GEO. N. TITUS,
"Comm. of deeds in the city of N. York.

"This indenture, made the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and thirty-four, between John Wilcox of the city of New Orleans, and State of Louisiana, merchant, of the first part, and Chester Clark, Thomas Hunt and Wells Phillips, of the city of New York, merchants, of the second part. Whereas the said John Wilcox is justly indebted to the said parties of the second part, in the sum of twenty five thousand two hundred and six dollars and eight cents, lawful money of the United States of America, secured, to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of fifty thousand four hundred and twelve dollars and sixteen cents, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of twenty-five thousand and two hundred and six dollars and eight cents, in manner following, to wit:

To Wells Phillips.

One Note at 7 months for	$693 74
One Note at 9 months for	701 50
One Note at 15 months for	724 87
One Note at 18 months for	736 43
One Note at 21 months for	748 08
One Note at 27 months for	771 32

To Thomas Hunt & Co.

One Note at 7 months for	$690 11
One Note at 9 months for	696 80
One Note at 15 months for	719 97
One Note at 18 months for	731 55
One Note at 21 months for	743 13
One Note at 27 months for	776 31

To Weyman, Clark & Co.

One Note at 7 months for	$622 87
One Note at 9 months for	629 85
One Note at 15 months for	650 7
One Note at 18 months for	661 26
One Note at 21 months for	671 73
One Note at 27 months for	692 67

To Pinkney and Bertine.

One Note at 7 months for	$424 05
One Note at 9 months for	428 78
One Note at 15 months for	443 05
One Note at 18 months for	450 18
One Note at 21 months for	457 03
One Note at 27 months for	471 57

To Luke Davies

One Note at 9 months for	$137 11
One Note at 15 months for	141 67
One Note at 24 months for	146 33

To Walter Jagger & Co.

One Note at 16 months for	$201 25

To Arlando Fish.

One Note at 7 months for	$282 03
One Note at 9 months for	284 19
One Note at 15 months for	293 67
One Note at 18 months for	298 41

One Note at 21 months for - -	303 15
One Note at 27 months for - -	312 65
One Note at 9 months for - -	129 68
One Note at 15 months for - -	133 99
One Note at 27 months for - -	138 30

To W. & S. Van Buskirk.

One Note at 7 months for - -	$294 60
One Note at 9 months for - -	297 90
One Note at 15 months for - -	307 80
One Note at 18 months for - -	312 75
One Note at 21 months for - -	317 70
One Note at 27 months for - -	327 60

To H. Booraem & Co.

One Note at 7 months for - -	$134 22
One Note at 9 months for - -	135 72
One Note at 15 months for - -	140 23
One Note at 18 months for - -	142 49
One Note at 21 months for - -	144 75
One Note at 27 months for - -	149 26

To Van Wyck & Phillips.

One Note at 7 months for - -	$134 08
One Note at 9 months for - -	135 58
One Note at 15 months for - -	140 08
One Note at 18 months for - -	142 33
One Note at 21 months for - -	144 58
One Note at 27 months for - -	149 08

To Austin Melvin & Co.

One Note at 7 months for - -	$155 96
One Note at 9 months for - -	157 70
One Note at 15 months for - -	162 94
One Note at 18 months for - -	165 56
One Note at 21 months for - -	168 18
One Note at 27 months for - -	173 42

To James W. Pinkney.

One Note at 14 months for - -	$742 61

To Alice Mead (Executrix.)

One Note at 7 months for - -	$203 33
One Note at 9 months for - -	205 61
One Note at 15 months for - -	212 45

One Note at 18 months for	- -	$215 87
One Note at 21 months for	- -	219 29
One Note at 27 months for	- -	226 13

To Manuel & Stout:

One Note at 7 months for	- -	$80 13
One Note at 9 months for	- -	81 03
One Note at 15 months for	- -	83 72
One Note at 18 months for	- -	85 06
One Note at 21 months for	- -	86 40
One Note at 27 months for	- -	89 09

"All of which said notes abovementioned and described, being seventy-four in number, are dated New-York, September 1st, 1834, and made payable at New Orleans, Louisiana, at the times respectively above specified, to the several individuals or firms respectively abovenamed as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

"Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with the interest thereon, according to the true intent and meaning thereof; and also for and in consideration of the sum of one dollar to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said parties of the second part, and the survivors of them and to their heirs and assigns for ever, all the right, title and interest of the said party of the first part, of, in, and to the following mentioned and described property situated in the city of New Orleans aforesaid, to wit:—Six lots of ground in the suburb St. Mary, in the square comprised between Baronne, Phillippi, Gravier and Common streets, and marked one, ten, eleven, twelve, sixteen and seventeen, on a plan drawn by city surveyor, and annexed to an act passed before F. D. Armas, notary public, on the 18th April 1831, said lots having in American measure, viz. Lot No. 1, fifty-nine feet six inches in front on Common street, one hundred and forty six feet one inch and four-eighths on the line which divides it from property of James Freret, one hundred and forty-eight feet and one inch and two-eighths on the line which divides it from lot No. 2, and fifty-nine feet and one inch on the line which divides it from lots Nos. 16 and 17 in the rear. Lot No. 10, twenty-seven feet four inches front on Gravier street, one hundred and twenty-three feet seven inches and four-eighths front on Phillippi street, one hundred and *and* twenty-two feet eight *eight* inches and three-eighths on the line which divides it from lot No. 11, and twenty seven feet five inches on the line which divides it from lot No. 9. Lot No. 11, adjoining No. 10, has twenty seven feet two inches front on Gravier street, one hundred and twenty feet nine inches and three-eighths on the line which divides it from No. 12, one hundred and twenty-two feet eight inches and three-eighths on the line which divides it from

lot No. 10, and twenty-seven feet four inches in the rear, on the line which divides it from part of lot No. 9. Lot No. 12, adjoining the lot No. 11, twenty-seven feet two inches front on Gravier street; one hundred and twenty feet ten inches and three-eighths on the line which divides it from lot No. 13; one hundred and twenty-one feet nine inches and three-eighths on the line which divides it from lot No. 11; and twenty-seven feet four inches in the rear, on the line which divides it from part of lot No 9. Lot No. 16, twenty-nine feet four inches front on Gravier street; one hundred and forty-seven feet one inch and three-eighths on the line which divides it from lot No. 17; one hundred and forty-eight feet one inch and two eighths on the line which divides it from lot No. 15; (in part); and twenty-nine feet six and a half inches in the rear, on the line which divides it from part of lot No. one. Sixth lot, No. 17, adjoining lot No. 16, twenty-nine feet four inches front on Gravier street; one hundred and forty-six feet one inch and four-eighths on the line which divides it from the property of James Freret, one hundred and forty-seven feet one inch and three-eighths on the line which divides it from lot No. 15; and twenty-nine feet six inches and a half in the rear on the line which divides it from part of lot No. 1, together with all the buildings; and also a certain lot of ground in Camp street, suburb St. Mary, in square comprised between Camp, St. Joseph, St. Charles, and Julia streets, measuring in English measure, fifty-three feet four inches front on Camp street, by one hundred and seventy-three feet deep, and designated by the lot No. 3, on a plan drawn by the city surveyor, on the 22nd April, 1829: also a certain other lot of ground, together with all the buildings and improvements thereon, situated in square No. 24, Fauxbourg Saulet, and designated by the No. 8, on a plan drawn by C. F. Zimple, on the 29th January 1832, and annexed to an act passed in the office of W. Christy, notary, on the 13th Feb. 1832; said lot measuring twenty-nine feet front on Prytanee street, by one hundred and five in depth, American measure: also a certain other lot of ground, with all the improvements thereon, situated in square No. 24, Fauxbourg, designated by No. 12, on a plan drawn and annexed to an act passed as above; said lot measures thirty feet three inches and four lines front on Clio street, by one hundred and sixteen feet three inches and ten lines in depth, American measure: also a certain other lot with the improvements thereon, in square 24, Fauxbourg Saulet, designated by No. 11, on a plan drawn as above: said lot forms the corner of Prytanee and Clio streets, and measures twenty-nine feet three inches and ten lines front on the former, by one hundred and nine feet in depth and is front on the latter American measure: also a certain other lot in square 24, Fauxbourg Saulet, designated as No. 9; said lot measures twenty-nine feet front on Prytanee street, by one hundred and five feet in depth, American measure; also a certain lot designated as lot No. 36, in the plan as above; said lot measures thirty feet three inches and four lines front on Erato street, by one hundred and sixteen feet three incnes and ten lines in depth, American measure; also a certain other lot in same square and Fauxbourg, designated as No. 10, on a plan as above; said lot measures twenty-nine feet front on Prytanee street, by one hundred and five feet in depth, American measure: also a certain other lot situated in suburb Delord, in the square comprised between Suzette, Benjamin, New Levee, and Tchoupitoulas

streets, and designated as lot No. 11, on a plan drawn by C. F. Zimple, surveyor, and in book of plans of Stringer, notary, as plan No. Y 100; said lot measuring twenty feet in front on Suzette street, between New Levee and Tchoupitoulas streets, by a depth of one hundred and sixty feet one inch and six lines, together with all the buildings and improvements thereon: also a certain other lot in suburb Delord, above the city, in square comprised between New Levee, Tchoupitoulas, Suzette and Benjamin streets; said lot designated as No. 5, on a plan drawn as above, and deposited as above, measuring twenty-two feet eight inches and nine lines in front, on New Levee street, between Benjamin and Suzette streets, by a depth of one hundred feet, with all the buildings and improvements thereon; also a certain lot in suburb Delord, on Levee street, between Benjamin and Suzette streets, and designated as lot No. 4, on a plan drawn as above; said lot measuring twenty-two feet eight inches and nine lines in front, on New Levee street, by a depth of one hundred feet with all the buildings and improvements thereon; also all that lot of ground designated as No. 3, situated in suburb St. Mary, in the square comprised between Common, Baronne, Gravier and Phillippi streets, having English measure twenty-seven feet two inches front on Gravier street, one hundred and nineteen feet eleven inches and two-eighths on the line which divides it from lot No. 14; one hundred and twenty feet ten inches and three-eighths on the line which divides it from lot No. 12, and twenty-seven feet four inches in the rear, where it is separated in part, from lot No. 9, together with all the buildings and improvements thereon; also all other real estate of the said party of the first part, situated in or near the said city of New Orleans, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part, of, in, and to the same; and every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said parties of the second part, and the survivor of them, their heirs and assigns, to their own proper use, benefit and behoof for ever: provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay unto the said parties of the second part, or the survivor of them, their executors, administrators or assigns, the said sums of money mentioned in the condition of the said bond or obligation, according to the true intent and meaning thereof; that then these presents and the estate thereby granted, shall cease, determine, and be null and void. And the said John Wilcox for himself, his heirs, executors and administrators, doth covenant and agree to pay unto the said parties of the second part, and the survivor of them, their executors, administrators or assigns; the said sum or sums of money, and interest as mentioned above and expressed in the condition of the said bond; and if default shall be made in the payment of the said sum or sums of money abovementioned, or the interest that may accrue thereon, or of any part thereof, that then and from thenceforth, it shall be lawful for the said parties of the second part, or the survivors of them, their

executors, administrators or assigns, to enter into or upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors and administrators or assigns therein, at public auction or otherwise, according to the acts and laws in such case made and provided, and as the attorneys or attorney of the said party of the first part, for that purpose by these presents duly authorized constituted to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the monies arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators or assigns; which sale so to be made, shall for ever be a perpetual bar both in law and equity against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under them or any of them. In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed "JOHN WILCOX, [SEAL.]
"CHESTER CLARK, [SEAL.]
"THOMAS HUNT, [SEAL.]
"WELLS PHILLIPS, [SEAL.]

"Sealed and dilivered in the presence of
ELIAS H. ELY,
GEORGE N. TITUS.

CITY AND COUNTY OF NEW YORK, ss.

"On this twenty-fifth day of October, in the year one thousand eight hundred and thirty-four, before me, the subscriber, personally appeared Elias H. Ely of the said city, counsellor at law, to me known, who being by me duly sworn, did depose and say: that he knew John Wilcox, Chester Clark, Thomas Hunt and Wells Phillips, who were then present, to be the individuals described in, and executed the foregoing mortgage; and the said John Wilcox, Chester Clark, Thomas Hunt and Wells Phillips, each respectively acknowledged that he executed the said instrument, for the purposes therein mentioned.

Signed "GEO. N. TITUS,
"Commissioner of Deeds in the City of N. Y.

"By William L. Marcy, Governor of the State of New-York, it is hereby certified, that George N. Titus, before whom the two instruments hereunto annexed were acknowledged, was on the day of the date of the certificate of acknowledgment, endorsed on the same respectively, a commissioner of deeds in and for the city and county of New-York, in this State, duly commissioned and sworn, and by law authorized to *to* take the proof and acknowledgment of deeds and other instruments in writing, that the

said certificates are in due form, and that full faith and credit may, and ought to be given to the official acts of said Commissioner.

"In testimony whereof, I have caused the great seal of the State to be hereunto affixed. Witness my hand at the city of Albany, the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and thirty-four.

Signed "WM. L. MARCY, [SEAL.]

"Passed the Secretary's office, the 28th day of October 1834.

Signed "ARCHIBALD CAMPBELL,
Deputy Secretary."

And having thus transcribed said documents, I the said notary, have hereunto annexed the same, at the request of the said Paul Tulane, to remain for recourse. Done and recorded at New Orleans, the fifteenth day of November, eighteen hundred and thirty-four, in presence of William Lake and Pascalis Labarre, witnesses, who have signed their names with said appearer and me, notary.

Signed Paul Tulane, William Lake, Pascalis Labarreand Carlile Pollock, not. pub.

I certify the foregoing to be a true copy of the original act, and the documents thereunto annexed, on record and deposit in my office, New Orleans, this 1st day December, 1834.

Signed CARLILE POLLOCK, Not'y Pub. [SEAL.]

Notes.

NEW-YORK, Sept. 1st, 1834.

$201 85.

Sixteen months after date, I promise to pay to the order of Walter Jagger & Co., two hundred and one dollars eighty-five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$137 11.

Nine months after date, I promise to pay to the order of Mr. Luke Davies, one hundred and thirty-seven dollars eleven cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed LUKE DAVIES.

NEW-YORK, 1st Sept. 1834.

$141 67.

Fifteen months after date, I promise to pay to the order of Mr. Luke Davies, one hundred and forty-one dollars sixty-seven cents, value received, payable at New Orleans.

Signed JOHN WILCOX.
Endorsed LUKE DAVIES.

NEW-YORK, Sept. 1st, 1834.

$742 61.

Fourteen months after date I promise to pay to the order of Mr. James W. Pinckney, seven hundred and forty-two dollars sixty-one cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$282 03.

Seven months after date, I promise to pay to the order of Orlando Fish, two hundred and eighty-two dollars three cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

(Endorsed) Pay Wm. Augs't. White, or order,
WM. AUGS. WHITE.

NEW-YORK, Sept. 1st, 1834.

$284 19.

Nine months after date, I promise to pay to the order of Mr. Orlando Fish, two hundred and eighty-four dollars nineteen cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ORLANDO FISH.

NEW-YORK, Sept. 1st, 1834.

$129 68.

Nine months after date, I promise to pay to the order of Mr. Orlando Fish, one hundred and twenty-nine dollars sixty-eight cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ORLANDO FISH.

NEW-YORK, Sept. 1st, 1834.

$133 99.

Fifteen months after date, I promise to pay to the order of Mr. Orlando Fish, one hundred and thirty-three dollars ninety-nine cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ORLANDO FISH.

NEW-YORK, Sept. 1st, 1834.

$293 67.

Fifteen months after date, I promise to pay to the order of Mr. Orlando Fish, two hundred and ninety-three dollars, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ORLANDO FISH.

NEW-YORK, Sept. 1st, 1834.

$298 41.

Eighteen months after date, I promise to pay to the order of Mr. Orlando Fish, two hundred and ninety-eight dollars forty-one cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ORLANDO FISH.

NEW-YORK, Sept. 1st, 1834.

$134 08.

Seven months after date, I promise to pay to the order of Messrs. Van Wyck & Phillips, one hundred and thirty-four dollar seight cents, value received, payable in New Orleans, La.

Signed JOHN WILCOX.
Endorsed VAN WYK & PHILLIPS.
ABM. VAN WYCK.

NEW-YORK, Sept. 1st, 1834.

$135 58.

Seven months after date, I promise to pay to the order of Messrs. Van Wyck and Phillips, one hundred and thirty-five dollars fifty-eight cents, value received, payable in New Orleans, La.

Signed JOHN WILCOX.
Endorsed

NEW-YORK, Sept. 1st, 1834.

$140 08.

Fifteen months after date, I promise to pay to the order of Messrs. Van Wyck & Phillips, one hundred and forty dollars eight cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$142 33.

Eighteen months after date I promise to pay to the order of Messrs. Van Wyck & Phillips, one hundred and forty-two dollars eight cents, value received, payable at New Orleans.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$424 05.

Seven months after date I promise to pay to the order of Messrs. Pinkney & Bertine, four hundred and twenty-four dollars five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed: Pay J. Delafield, or order.
Pay P. K. Delafield, assistant Cashier.
PINKNEY & BERTINE.

NEW-YORK, Sept. 1st, 1834.

$428 78.

Nine months after date, I promise to pay to the order of Messrs. Pinkney and Bertine, four hundred and twenty-eight dollars seventy-eight cents, value received, payable New Orleans, La.

Signed JOHN WILCOX.

Endorsed, Pay J. Delafield, Esq., Cashier. or order.

PINKNEY & BERTINE.

NEW-YORK, Sept. 1st, 1834.

$443 05.

Fifteen months after date, I promise to pay to the order of Messrs. Pinkney & Bertine, four hundred and forty-three dollars five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Pay J. Delafield, cashier, or order.

PINKNEY & BERTINE.

NEW-YORK, Sept. 1st, 1834.

$450 18.

Eighteen months after date, I promise to pay to the order of Messrs. Pinkney and Bertine, four hundred and fifty dollars eighteen cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$203 33.

Seven months after date, I promise to pay to the order of Mrs. Alice Mead, (Executrix) two hundred and three dollars thirty-three cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed JAMES K. FROTHINGHAM,
Attorney for Alice Mead, Executrix.

NEW-YORK, Sept. 1st, 1834.

$205 61.

Nine months after date, I promise to pay to the order of Mrs. Alice Mead, (Executrix) two hundred five dollars sixty-one cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed ALICE MEAD.

NEW-YORK, Sept. 1st, 1834.

$212 45.

Fifteen months after date, I promise to pay to the order of Mrs. Alice Mead, (Executrix) two hundred and twelve dollars forty-five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed ALICE MEAD.

NEW-YORK, Sept. 1st, 1834.

$215 87.

Eighteen months after date, I promise to pay to the order of Mrs. Alice Mead, (Executrix) two hundred and fifteen dollars eighty-seven cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed ALICE MEAD.

NEW-YORK, Sept. 1st, 1834.

$693 74.

Seven months after date, I promise to pay to the order of Mr. Wells Phillips, six hundred and ninety three dollars, seventy-four cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$701 50.

Nine months after date, I promise to pay to the order of Mr. Wells Phillips, seven hundred and one dollars fifty cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1836.

$724 87.

Fifteen months after date, I promise to pay to the order of Mr. Wells Phillips, seven hundred and twenty-four dollars eighty-seven cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1836.

$736 43.

Eighteen month after date, I promise to pay to the order of Mr. Wells Phillips, seven hundred and thirty-six dollars forty-three cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$294 60.

Seven months after date, I promise to pay to the order of Messrs. W. & J. Van Buskirk, two hundred and ninety-four dollars sixty cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.
Endorsed: Pay S. & M. Allen, or order.
W. & J. VAN BUSKIRK.

NEW-YORK, 1st Sept. 1834.

$297 90

Nine months after date, I promise to pay to the order of W. & J. Van Buskirk, two hundred and ninety-seven dollars ninety cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Pay N. Delaplaine,

W. & J. VAN BUSKIRK.

NEW-YORK, Sept. 1st, 1834.

$307 80.

Fifteen months after date, I promise to pay to W. & J. Van Buskirk, three hundred and seven dollars eighty cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed, Pay S. & M. Allen, or order,

W. & J. VAN BUSKIRK.

NEW-YORK, Sept. 1st, 1834.

$312 75.

Eighteen months after date, I promise to pay to the order of J. & W. Van Buskirk, three hundred and twelve dollars seventy-five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed, Pay S. & M. Allen, or order,

J. & W. VAN BUSKIRK.

NEW-YORK, Sept. 1st, 1834.

$80 11.

Seven months after date, I promise to pay to the order of Messrs. Meinell & Stout, eighty dollars thirteen cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, Sept. 1st, 1834.

$81 03.

Nine months after date, I promise to pay to the order of Meinell & Stout, eighty-one dollars three cents, value received, payable in New Orleans, Louisiana,

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$83 72.

Fifteen months after date, I promise to pay to the order of Messrs. Meinell & Stout, eighty-three dollars, seventy-two cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$85 06.

Eighteen months after date, I promise to pay to the order of Meinell & Stout, eighty-five dollars six cents, value received, payable at New Orleans, Louisiana.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$155 96.

Seven months after date, I promise to pay to the order of Messrs. Austin Melvin & Co., one hundred fifty-five dollars ninety-six cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$157 70.

Nine months after date, I promise to pay to the order of Messrs. Austin Melvin & Co., one hundred and fifty-seven dollars seventy cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$162 94.

Fifteen months after date, I promise to pay to the order of Messrs. Austin Melvin & Co., one hundred sixty-two dollars ninety-four cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$165 56.

Eighteen months after date, I promise to pay to the order of Messrs. Austin Melvin & Co., one hundred and sixy-five dollars fifty-six cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$690 11.

Seven months after date, I promise to pay to the order of Thomas Hunt & Co., six hundred ninety dollars eleven cents, value received, payable at New Orleans.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$696 80.

Nine months after date I promise to pay to the order of Thomas Hunt & Co., six hundred and ninety-six dollars eighty cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW YORK, September 1st, 1834.

$719 97.

Fifteen months after date, I promise to pay to the order of Thomas Hunt & Co., seven hundred and nineteen dollars ninety-seven cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$731 55.

Eighteen months after date I promise to pay to the order of Thomas Hunt & Co., seven hundred and thirty-one dollars fifty five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$622 87.

Seven months after date, I promise to pay to the order of Weyman, Clark & Co , six hundred and twenty-two dollars eighty-seven cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

Endorsed, Pay to the order of Mr. Paul Tulane,

WEYMAN CLARK & Co.
PAUL TULANE & Co.

NEW-YORK, September 1st, 1834.

$629 85.

Nine months after date, I promise to pay to the order of Weyman, Clark & Co., six hundred and twenty-nine dollars eighty-five cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$650 79.

Fifteen months after date I promise to pay to the order of Weyman, Clark & Co., six hundred and fifty dollars seventy-nine cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$661 26.

Eighteen months after date, I promise to pay to the order of Weyman, Clark & Co., six hundred and sixty-one dollars twenty-six cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, September 1st, 1834.

$134 22.

Seven months after date, I promise to pay to the order of Mr. H. Booraem & Co., one hundred and thirty-four dollars twenty-two cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, 1st September, 1834.

$135 72.

Nine months after date, I promise to pay to the order of H. Booraem & Co., one hundred and thirty-five dollars seventy-two cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, 1st September, 1834.

$140 23.

Fifteen months after date, I promise to pay to the order of Messrs. Booraem & Co., one hundred and forty dollars twenty-three cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

NEW-YORK, 1st September, 1834.

$142 49.

Eighteen months after date, I promise to pay to the order of Messrs. H. Booraem & Co., one hundred forty-two dollars forty-nine cents, value received, payable at New Orleans, La.

Signed JOHN WILCOX.

☞ The four last notes are endorsed as follows: Pay Paul Tulane, or order,

H. BOORAEM & CO.

And afterwards, on the 30th day of December, 1835, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

The defendant, by his counsel, McHenry Esq., moves the court that the plaintiffs in the above entitled suit, show cause on Wednesday the 6th January next, at ten o'clock, A. M., why all the papers and documents referred to in the plaintiffs' petition, of which this defendant has craved and put on file his oyer in this honorable court, should not be filed, or why this suit should not be dismissed, as prayed for in the said oyer.

And certified copies of the above rule having been duly issued, the following return was afterwards made by the Marshal.

Marshal's Return.

Received 30th December, 1835, and on same day served copy of the within rule on G. B. Duncan Esq., by leaving the same at his domicil. Returned January 6th, 1836.

Signed JOHN H. HOLLAND, Marshal.

And afterwards, on the 6th day of January, 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

The rule taken by defendant Wilcox, on the plaintiffs, to show cause why the documents referred to in the Plaintiffs' petition, and of which oyer was prayed should not be filed, was taken up by counsel; whereupon it was ordered by the court, that the rule be discharged, it appearing that said documents were all on file.

And afterwards, on the 7th day of January, 1836, the defendant John Wilcox, by his attorney, John McHenry, Esq., came into court and filed the following exceptions, to wit:

HUNT, PHILLIPS & CLARKE,
vs.
JOHN WILCOX, et al.

The defendant, by his counsel, J. McHenry, comes into court, and excepts to the petition presented by the plaintiffs against him on the following grounds:

1st. On the ground that the promissory notes specified in plaintiffs' petition, are not yet due, and this suit is premature in consequence thereof.

2nd. That no authority is shown by the pretended trustees that any such power is vested in them, and if the plaintiffs are trustees, they have no authority to sue this defendant.

3d. That this suit cannot be maintained in its present form; the plaintiffs are all persons composing several distinct and separate commercial firms in the city of New York, and cannot be joined in this suit as plaintiffs.

4th. That if the numerous persons represented as merchants could be joined together, and are plaintiffs, then the said Hunt, Phillips, and Clark, cannot be plaintiffs.

5th. This court *court* cannot entertain jurisdiction of this cause in its present form.

Wherefore defendant prays to be hence dismissed.

Signed JOHN McHENRY, of counsel.

And afterwards, on the 25th day of January, A. D. 1836, the plaintiffs, by their attorney G. B. Duncan, Esq., came into court and filed the following supplemental petition, to wit:

United States District Court in and for the Eastern District of Louisiana.

CLARK, HUNT, & PHILLIPS, trustees, &c.
vs.
JOHN WILCOX, et al.

The said plaintiffs, citizens of the State of New York, residing in the city of New-York, in their capacity of trustees as fully set forth in the original petition for citizens of the State of New York, residing in the city of New-York, by this supplemental petition, repectfully represents: That the promissory notes sued on in this case, are fully and particularly set forth and described in their original petition; that the said notes are now on file in this court; and your petitioners beg leave to refer to the said original petition for a description of said notes, and now show to this honorable court, that since the institution of this suit, many of the notes therein mentioned have become due and payable, according to the effect and tenor thereof, and that none of the same have been paid. They therefore pray, that this supplemental petition may be served upon said Wilcox, and after all due proceedings had, that judgment be herein rendered against said Wilcox, in favor of your petitioners in their said capacity as originally prayed for, and on all notes therein mentioned as are now due, and on all that may hereafter become due, or which may be due on the day of the rendition of judgment herein; and on all those not then due, they pray judgment when the same becomes due; and for whatever judgment may be in conformity to equity and justice and adapted to the nature of their case; for general relief, &c.

Signed G. B. DUNCAN, Att'y for Plaintiff.

And thereupon the following citation issued from the Clerk's Office, to wit:

The President of the United States of America, to the Marshal of the Eastern District of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon John Wilcox, so that he be and appear at the district court of the United States, for the Eastern District of Louisiana, to be holden in the city of New Orleans, on the third Monday of February, 1836, to answer to the supplemental complaint of Clark, Hunt, and Phillips, trustees, &c., and that he do file his defence or answer, with the clerk of said court on or before the same, or judgment will be given against him by default: and have you then and there this writ.

Witness the honorable Samuel H. Harper, Judge of the said court, at the city of New Orleans, this 25th day of January, 1836, and sixtieth year of the independence of the United States.

[SEAL.] Signed WM. B. OAKS, Deputy Clerk.

Marshal's Return.

Received January 26, 1836, and on the same day I served a copy of the within citation, and copy of the plaintiffs' supplemental petition, on John Wilcox, the defendant, and cited the said John Wilcox in all things as within commanded.

Returned the same day.

Signed JOHN H. HOLLAND, Marshal.

And afterwards, on the 16th day of February, 1836, one of the defendants, John Wilcox, by his attorney, John McHenry Esq., came into court and filed the following answer, to wit:

HUNT, PHILLIPS & CLARK,
vs.
JOHN WILCOX, et al.

Should the exceptions which have been filed in the above cause be overruled by the court, then this respondent for further answer, says: That he denies all and singular the allegations set forth in the petition presented in this honorable court by the plaintiffs, tending to charge or render him responsible or liable in any manner, to the said Thomas Hunt, Wells Phillips, and Chester Clark, in their said capacities, or the persons they represent, in the said sum of twenty-five thousand two hundred and six dollars and eight cents, or any part thereof; and should any thing be established against him, he then pleads twenty-six thousand dollars as a sett off, which the said Thomas Hunt, Wells Phillips, and Chester Clark justly owe him for this, viz: That on or about the beginning of the month of October, 1834, your respondent proceeded to the city of New-York, for the purpose of effecting an amicable adjustment with certain creditors residing there, having claims against him; and that the said Thomas Hunt, Wells Phillips, and Chester Clarke being themselves creditors, and acting for, and representing other creditors, made and entered into a certain written agreement for themselves, and on the part of the other creditors, and upon your respondents giving the promissory notes set forth in the plaintiffs' petition; together with the bond and general mortgage (to secure the payment of the said notes) on his said real estate, and having complied with other stipulations set forth in a written contract, which was entered into between the said Phillips, Hunt, and Clarke for themselves and the other creditors, they obligated in the most solemn manner to allow your respondent to renew certain prior existing incumbrances or mortgages, which was then in full force on the said property; and if it become necessary from his pecuniary situation, the said mortgages was to have the same preference as the former mortgages had; and it was further agreed and understood, that your respondent was to have full power, not only to remortgage, but to sell any portion or all of his real estate, at discretion; and it was upon the plaintiffs thus obligating themselves to comply with these stipulations, that your respondent made, and gave them the said promissory notes specified and set forth in the said plaintiffs' petition.

Your respondent further shows, that some time in the latter part of the year 1834, after his return to New Orleans, he ascertained that he would be compelled to remortgage or sell a portion of his real estate to satisfy the claims, to secure the payment of which the former mortgages had been given, and accordingly informed the said plaintiffs; and at which period he had an opportunity of remortgaging some of the said property, but to the great surprise of your respondent, the said plaintiffs refused to give their consent to allow the said property to be remortgaged.

Your respondent further shows: that about the same period, he had a fine opportunity of selling a portion or all of his real estate to a very great advantage, particularly the six lots described and set forth in plaintiffs' petition as being situated in the suburb St. Mary, of this city, in the square com-

prised between Baron, Phillippi, Gravier, and Common streets, and marked as is described in said petition; but that the said Hunt, Phillips, and Clarke, refused to give their consent to allow him to sell the said six lots, or any part or portion of his said property.

Your respondent further shows, that the said Hunt, Phillips, and Clarke, in consequence of having thus violated their said written agreement or contract which they had entered into with him in the most solemn manner, caused the sacrifice of the greater portion of his real estate, by refusing to give their consent to a remortgage or a sale of any of his said property, as they had obligated themselves to do; and in consideration of which stipulations, on the part of the plaintiffs, the said notes, bond, and mortgage, were given by him.

Your respondent further shows, that to satisfy the claim for which the original incumbrances or mortgages had been given, a large portion of his real estate was seized and sold by the sheriff, which took place in the early part of the year 1835, during a very great pressure in our money market; and that the six lots of ground, and other property, was thus sold and sacrificed, worth then fifty thousand dollars, for about twenty-four thousand; thus have the said plaintiffs damaged him twenty-six thousand dollars, besides causing your respondent to be protested, and his credit destroyed as a merchant.

Wherefore your respondent prays, that the said sum of twenty-six thousand dollars be allowed him, which he pleads as a set off in reconvention, for damages sustained and set forth in the foregoing premises, and that a judgment be rendered in his favor for said sum, against the said Hunt, Wells Phillips, and Chester Clarke, and that the same may be setoff against any claim that may be established in their favor, and for general relief and trial by jury.

And as in duty bound, &c.

Signed J. McHENRY, of Counsel.

And afterwards, on the 18th day of February, A. D. 1836, the plaintiffs came into court and filed the following supplemental petition, to wit:

District Court of the United States, for the Eastern District of Louisiana.:

HUNT, CLARK & PHILLIPS,
vs.
WILCOX, et al.

The Plaintiffs by leave of the court, file this supplemental petition, and pray for trial by jury in all the cases where the several defendants have filed separate answers.

Signed G. B. DUNCAN, Att'y for pet'r.

And afterwards on the 18th day of February 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

This cause having been fixed for this day at the calling of the docket, and it appearing that there were exceptions of law made to the court to be first disposed of, the jury were dismissed, and on motion of L. C. Duncan, Esq., plaintiffs' counsel, it was ordered that the cause be fixed for hearing on the exceptions for Monday next, at 10 o'clock, A. M.

And afterwards, on the 22d day of February, A. D. 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

This cause came on this day before the court, upon the exceptions of the defendant, John Wilcox, when after hearing the evidence and arguments of counsel, the court took time to consider.

And afterwards, on the twenty-fourth day of February, A. D. 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

The court having maturely considered the exceptions made by the defendant, John Wilcox, now order that the same be overruled, and the case transferred to the jury docket.

And afterwards, on the twenty-fifth day of February 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

On motion of L. C. Duncan, Esq. of counsel for plaintiffs, ordered that this cause be fixed for trial on the merits for Thursday 3d March, 1836, at 10 o'clock A. M., and that notice issue to the parties and their attorneys.

Whereupon, copies of said order of the same, were issued from the clerk's office, on one of which the Marshal made the following return, to wit:

Served copy of the within rule or order personally on John Wilcox, on E. V. Jourdain, on Alfred Hennen, on McHenry, on Mr. Hullen, and on J. T. Preston, Esq., February 26th 1836. Returned February 29th 1836.

Signed JOHN H. HOLLAND, Marshal.

And afterwards, on the third day of March 1836, the following entry was made of record, to wit;

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

On motion of G. B. Duncan, Esq., ordered by the court that this cause be continued until the 10th day of March 1836, at 10 o'clock, A. M.

Whereupon copies of the said order were issued from the clerk's office, on one of which the following return was made by the marshal, to wit:

Served copy of the within document on John Wilcox, A. Hennen, McHenry, J. B. Hullen, J. T. Preston, and E. V. Jourdain, March 5th 1836.

Signed JOHN H. HOLLAND, Marshal.

And afterwards on the tenth day of March 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

On this day came the parties by their attorneys, and thereupon came a jury who were sworn well and truly to try the issue between the parties, and a true verdict give according to the evidence, to wit: C. Fulmen, R. Hubbard, Geo. Kline, J. B. Laporte, A. Bringier, L. Arcueil, C. Darcantel, J. Mooney, James Flood, G. Tunstall, Peter Ogier, and G. Y. Bright, when after some considerable progress, the further consideration of the cause was postponed until to-morrow, at 10 o'clock A. M.

And afterwards, on the eleventh day of March 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX et al.

This cause was this day resumed by the court and jury heretofore empanneled; on motion of plaintiffs' counsel, leave was granted them to withdraw the notes not due, before the jury went out, when the jury having heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and soon returned the following, which was ordered to be recorded, and is as follows: "We, the jury, find for the plaintiffs, for all the notes herein mentioned, that are now at maturity, amounting to the sum of $16,778 25 cents, with interest at the rate of 7 per centum per annum on the same after maturity; this is our general finding against the defendant John Wilcox, and we find for the plaintiffs against the defendants Hennen, Hullen, and Jourdain, in manner and form as charged in plaintiffs' petition, that the said Hullen and Jourdain, nor either of them have any claim on the sum of $4075 mentioned by the plaintiffs in their petition, and claimed by them, and that of the sum of $8150 left in the hands of the defendant Hennen, as mentioned in the petition, we find that it is the same resulting from the sale of six lots of ground as mentioned in plaintiffs' petition, and upon which they held a mortgage, and which was raised by order of the honorable the judge of the parish court, in and for the parish and

city of New Orleans, according to law, as mentioned in plaintiffs' petition; and that the plaintiffs have a special lien and privilege upon the said $4075 now in the hands of Alfred Hennen, one of the defendants, as is claimed by the plaintiffs.

New Orleans, 11th March, 1836.

Signed G. Y. BRIGHT, foreman

Whereupon, it was considered by the court, that judgment be entered up in favor of the plaintiffs, and against the defendant, John Wilcox, for the sum of $16,778 25 cents, with interest of seven per centum per annum, upon the following sums comprising said amounts from the dates opposite to each, to wit:

Upon $690 11 from April 1st, 1835.
Upon 696 80 from June 1st, 1835.
Upon 719 97 from December 1st, 1835.
Upon 731 55 from March 1st, 1836.
Upon 134 22 from April 1st, 1835.
Upon 135 72 from June 1st, 1835.
Upon 140 23 from December 1st, 1835.
Upon 142 49 from March 1st, 1836.
Upon 622 87 from April 1st, 1835.
Upon 629 89 from June 1st, 1835.
Upon 650 79 from December 1st, 1835.
Upon 661 26 from March 1st, 1836.
Upon 80 13 from April 1st, 1835.
Upon 81 03 from June 1st, 1835.
Upon 83 72 from December 1st, 1835.
Upon 85 06 from March 1st, 1836.
Upon 294 60 from April 1st, 1835.
Upon 297 90 from June 1st, 1835.
Upon 307 80 from December 1st, 1835.
Upon 312 75 from March 1st, 1836.
Upon 693 74 from April 1st, 1835.
Upon 701 50 from June 1st, 1835.
Upon 724 87 from December 1st, 1835.
Upon 736 43 from March 1st, 1836.
Upon 203 33 from April 1st, 1835.
Upon 205 61 from June 1st, 1835.
Upon 212 45 from December 1st, 1835.
Upon 215 87 from March 1st, 1836.
Upon 424 05 from April 1st, 1835.
Upon 428 78 from June 1st, 1835.
Upon 443 05 from December 1st, 1835.
Upon 450 18 from March 1st, 1836.
Upon 134 08 from April 1st, 1835.
Upon 135 58 from June 1st, 1835.
Upon 140 08 from December 1st, 1835.
Upon 142 33 from March 1st, 1836.
Upon 282 00 from April 1st, 1835.

Upon $284 19 from June 1st, 1835.
Upon 129 68 from June 1st, 1835.
Upon 133 99 from December 1st, 1835.
Upon 293 67 from December 1st, 1835.
Upon 298 41 from March 1st, 1836.
Upon 742 61 from November 1st, 1835.
Upon 137 11 from June 1st, 1835.
Upon 141 67 from December 1st, 1835.
Upon 201 85 from January 1st, 1836.
Upon 155 96 from April 1st, 1835.
Upon 157 70 from June 1st, 1835.
Upon 162 94 from December 1st, 1835. And
Upon 165 56 from March 1st, 1836.

$16,778 25.

And it is further considered by the court, that the said Hullen and Jourdain, nor either of them have any claim on the sum of $4075 mentioned by the plaintiffs in their petition; and further it is considered by the court, that judgment be entered up in favor of the plaintiffs, and against the defendant Alfred Hennen, for the sum of $4075, and that *that* the defendant John Wilcox pay the costs of this suit.

And on the trial aforesaid, the defendant, by his attorney, filed the following bill of exceptions, to wit:

HUNT, PHILLIPS & CLARK,
vs.
JOHN WILCOX, et al.

On the trial of this cause, when the jury were called to be sworn, the counsel of the plaintiffs moved the court to strike out all that part of the defendant Wilcox's answer after the general denial, and by which he claims in reconvention or to be set off against any demand which the plaintiffs might establish the sum of twenty-six thousand dollars, and sets forth all the grounds upon which he claims the same, and concludes with a prayer for judgment for said sum of twenty-six thousand dollars to be set off against any claim of plaintiffs; the defendant opposed the motion on the ground that it was made too late, alleging that the law and rules of this court permit no alteration in the pleadings, after the cause was set for trial; and farther, that the claim in reconvention grew out of the contract on which suit is brought, and that defendants were prepared with witnesses in court, to establish the breach, and liquidate the damages claimed. The court, after argument, sustained the motion of the plaintiffs' counsel, and ordered the claim in reconvention in the answer to be striken out, to which opinion of the court the counsel of the defendant Wilcox excepted, and prayed the court to sign and seal their bill of exceptions, and that all the grounds of the exception may appear of record, the rules of this court, the answer of the defendant, and the contract on which suit is brought, is annexed to and made part of this bill of exceptions. The court ordered the plea in reconvention to be struck out as being contrary to the settled practice of this court.

Signed SAML. H. HARPER.

And also, on the trial abovementioned, the attorney for the defendant Wilcox, filed the following bill of exceptions, to wit:

HUNT, PHILLIPS & CLARK,
vs.
JOHN WILCOX, et al.

On the trial of this cause, the plaintiff offered witnesses to prove the hand writing or signature of John Wilcox, one of the defendants, and that of all the plaintiffs to a sealed instrument purporting to be the contract set forth in the petition of the plaintiffs, which is hereunto annexed and made part of this bill of exceptions. The counsel of the defendant Wilcox objected to the introduction of the said witnesses, because it appeared from the said instrument itself, that there were two subscribing witnesses thereto, of whom the witnesses offered were not any, and the plaintiff offered no evidence to prove their incapacity or inability to testify. The court overruled the objections and admitted the witnesses, and the witnesses having deposed that they were acquainted with the hand writing of the said defendant Wilcox and all the plaintiffs, and had often seen them write, and that the signatures to the said instrument were in his hand writing of the said defendant Wilcox, and of the plaintiffs, offered to read the said instrument in evidence to the jury; to which the counsel for the said defendant Wilcox objected, the plaintiff having offered no evidence of the hand writing of the said subscribing witnesses, or assigned or proved any reason for not offering the testimony of the said subscribing witnesses, except that arising from presumption of their residing in the city of New-York, where the instrument purports to have been executed.

The court overruled all the said objections, admitted the testimony of the witnesses, and the instrument to be read in evidence to the jury upon the proof aforesaid, to all which the counsel for the said defendant Wilcox excepts, and prays this his bill of exceptions may be signed, &c. &c.

Signed SAML. H. HARPER.

And also, at the said trial, the defendant by his attorney, filed the following exceptions, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

At the trial of this case, the plaintiffs offered in evidence the notes of hand mentioned in the petition, to wit: One in favor of Walter Jagger, 4 in favor of Thomas Hunt; 2 in favor of Van Wycks & Phillips; 3 in favor of Wells Phillips; one in favor of Pinkney & Bertine; 2 in favor of Austin Melvin & Co.; 3 in favor of Wm. Clark & Co.; none of which are endorsed by the payees thereof. To the introduction of this evidence, the counsel for the defendant Wilcox objected, alleging that the plaintiffs could not maintain any action on these notes, without an endorsement of them by the payees to the plaintiffs; but the court overruled the objection, and permitted the said notes to be given in evidence to the jury; to which decision of the court the counsel for the plaintiffs excepted, and this his bill of exceptions thereto is signed in open court that the same may appear of record.

The plaintiffs next offered in evidence the following notes mentioned in the petition, to wit: 4 in favor of H. Booraem & Co.; 4 in favor of Alice Mead; 4 in favor of W. & J. Van Buskirk; 1 in favor of James W. Pinkney; 2 in favor of Luke Davies; 5 in favor of Orlando Fish; 1 in favor of Wells Phillips; 2 in favor of Van Wyck & Phillips; 3 in favor of Pinkney and Bertine; 2 in favor of Austin Melvin & Co.; endorsed by the payees thereof specially, as stated in the endorsements, which are made part of this bill of exceptions, to the introduction of which in evidence the counsel for defendant Wilcox objected, because the same were not the property of the plaintiffs; but the court overruled this objection, and admitted the same to be given in evidence, to which the counsel for defendants excepted, and this his bill of exceptions thereto is signed in open court, that the same may appear of record, this 11th March, 1836.

Signed SAML. H. HARPER.

And also, at the said trial, the defendant, by his attorney, filed the following bill of exceptions, to wit:

HUNT, PHILLIPS & CLARK,
vs.
JOHN WILCOX, et al.

Be it remembered, that at the trial of this case, the counsel for the defendant, Wilcox, offered to prove a violation of the contracts sued on by the plaintiffs prior to the institution of this suit, and to show by witnesses that the same had been dissolved, destroyed, and annulled, by the illegal conduct of the plaintiffs, by non-complying with the stipulations therein contained on their part, which contracts are made part of this bill of exceptions. But the counsel for the plaintiffs objected to the introduction of said evidence, and the court sustained their objection, and refused to receive the evidence offered by the defendants. Wherefore the counsel for *for* defendants excepted to the decision of the court, and this their bill of exceptions thereto is signed in open court, that the same may appear of record. The court was of opinion, that the defendant's answer contained but two pleas: 1st, the general issue; and 2d, a plea in reconvention; the plea in reconvention had been previously ordered by the court to be struck out as not being a plea sustainable in this court, according to the settled practice, and that the evidence above recited could not be given under the general issue. This bill of exception is taken for the defendant Wilcox, only.

Signed SAML. H. HARPER.

And afterwards, on the fourteenth day of March 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

On motion of John McHenry, Esq., of counsel for John Wilcox, ordered that the plaintiffs shew cause why a new trial should not be granted in this case, on the grounds now filed by him.

And afterwards, copies of said rule were issued from the clerk's office, on one of which the Marshal made the following return, to wit:

Received, March 16th, 1836. Served copy of within rule same day on L. C. Duncan, attorney of plaintiffs.

Returned April 26th, 1836.

Signed J. H. HOLLAND, Marshal.

Grounds for a New Trial.

HUNT, PHILLIPS & CLARK,
vs.
JOHN WILCOX, et al.

The defendant, by his counsel, moves the court that the plaintiffs show cause on the first day of next term, at 10 o'clock, A. M., why the verdict rendered in the above entitled cause should not be set aside, and a new trial granted on the following grounds, viz:

1st. On the ground that the verdict of the jury is contrary to law and evidence.

2d. That the verdict and judgment are erroneous in themselves; sixteen thousand dollars is not shown to be due to the plaintiffs by the notes; yet the verdict is for more than twenty thousand dollars, including the sum for which it is rendered in the hands of A. Hennen, Esq.

3d. That the plea in reconvention as it was termed by the court, was a set off, which could have been pleaded by the practice of the common law, and not strictly a plea in reconvention, and should not have been stricken out.

4th. That under the plea of the general issue, the evidence offered by the defendant should have been admitted, to show that the plaintiffs on their part had not complied with the conditions of the contract upon which they had brought suit against the defendant.

5th. That no evidence should have been admitted by the court to prove the signatures to the contract sued on, there being subscribing witnesses to the said contract, who were not shown to be dead nor absent, by the plaintiffs.

6th. That the signatures of the *signatures of the* subscribing witnesses to the contract, were not proven, and that the document offered in evidence as a written contract, was not proof of the same, and should not have went to the jury as such, until said signatures had been duly proven by witnesses.

7th. That the plaintiffs did not prove any property in the said notes sued on, said notes not having been endorsed by the payees to said plaintiff, neither in full nor in blank; but many of them had been specially endorsed to other persons, not parties to this suit, to whom they consequently belonged.

8th. That the signatures to the written contract sued on, not having been proved in conformity to the requisitions of law, the capacities of the trustees in plaintiffs were not shown, and the verdict of the jury cannot stand.

9th. That many of the notes upon which the verdict was rendered, were endorsed during the progress of the trial, and the property in them

changed from the persons entitled to them at the original institution of the suit.

10th. That by the rules of practice adopted by this court, the plea termed the plea in reconvention should not have been stricken out at the commencement of the trial, but a rule should have been taken on defendant, and the notice required by law should have been given to him to show cause, &c., so as not to have taken defendant by surprise.

Signed McHENRY, for def't.

And afterwards, on the 16th day of May, 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

The rule taken in this case by the defendant, John Wilcox, on the plaintiffs, to show cause why a new trial should not be granted, came on this day, and was argued on part of the plaintiffs, by G. B. Duncan, Esq., and on part of the defendant, by John McHenry and A. Hennen, Esqrs.; whereupon the court took time to consider.

And afterwards, on the 17th day of May, A. D. 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

The court having maturely considered the rule taken in this case, and argued yesterday for a new trial, now orders that the same be overruled.

And afterwards, on the 19th day of May 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

On motion of Greer B. Duncan, Esq. of counsel for the plaintiffs, it is ordered that the judgment entered in this case of the 11th March 1836, be amended so that judgment be entered up in favor of the plaintiffs, and against the defendant, Alfred Hennen, in manner and form as found in the verdict of the jury aforesaid, and it is considered that the defendant, Alfred Hennen, having now in his hands the sum of four thousand and seventy-five dollars, upon which the plaintiffs have a special lien and privilege; it is therefore further ordered, adjudged, and decreed, that he do pay to the plaintiffs the aforesaid sum of $4075 00, to be applied to the payment of the verdict and judgment against the defendant, John Wilcox, and on default of his doing so, that the plaintiffs have execution against him for that sum, to be applied as aforesaid.

Judgment entered March 11th 1836.

Amended judgment entered May 19th 1836.

Judgment signed May 21st 1836.

And afterwards, on the 30th day of May, in the year 1836, the defendant, John Wilcox, by his attorney, McHenry Esq., came into court and filed the following petition, to wit:

To the Honorable Samuel H. Harper, Judge of the United States District Court in and for the Eastern District of Louisiana.

The petition of John Wilcox, a citizen residing in the city of New Orleans, respectfully shows:

That a judgment has been rendered against him in this honorable court, in the case entitled Clark, Hunt & Phillips, trustees, &c. vs. John Wilcox, et al. for the sum of sixteen thousand seven hundred and seventy-eight dollars twenty five cents, with interest at the rate of seven per cent. per annum, on the aforesaid sum, with cost of suit, and that your petitioner believes himself to be aggrieved by the said judgment thus rendered by the said court against him, and being advised that there is error in the rendition of said judgment, your petitioner prays the court that a writ of error may be allowed in this case, returnable in the Supreme Court of the United States, in the manner and upon the condition required by the laws of the United States, and that execution be stayed, upon giving the security required by law. And as in duty bound, &c.

Signed JOHN McHENRY, for petitioners.

Order.

Be it so, on the defendant John Wilcox entering into bond, in the sum of twenty thousand dollars, with Josiah Barker as his surety, conditioned as the law directs.

Signed SAML. H. HARPER, Judge U. S.

Bond.

Know all men by these presents, that John Wilcox as principal, and Josiah Barker as surety, are held and firmly bound unto Thomas Hunt, W. Phillips and Chester Clark, trustees of Wells Phillips, Thomas Hunt & Co. Weyman, Clark & Co., Pinkney & Bertine, Luke Davies, Walter Jagger, & Co., Arlando Fish, W. & J. Van Buskirk, Booraem & Co., Van Wyke & Phillips, Austin Melvin & Co., James W. Pinkney, Mrs. Alice Mead, (executrix) and Manuel & Stout, their heirs, executors, and administrators, and assigns, in the sum of twenty thousand, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and assigns, jointly and severally by these presents, sealed with our seals, and dated this thirty-first day of May, A. D. 1836.

Whereas the above bounden John Wilcox, this day appeared, and filed his writ of error to the Supreme Court of the United States, from a certain final judgment rendered in the court of the U. S. for the Eastern District of Louisiana, in a suit wherein the said Clark, Hunt, and Phillips, trustees, &c., are plaintiffs, and said Wilcox is defendant.

Now, the condition of this obligation is such, that if the said John Wilcox shall prosecute his writ of error to effect, and answer all damages and

costs if he fail to make his plea good, then this obligation shall be null and void, or else remain in full force and virtue.

Signed JOHN WILCOX, [SEAL.]
JOSIAH BARKER, [SEAL.]

Subscribed before me this 31st May, 1836.

Signed T. W. COLLINS, dep. clerk.

And on the 30th day of May, 1836, the following entry was made of record, to wit:

CLARK, HUNT & PHILLIPS,
vs.
JOHN WILCOX, et al.

On this day Josiah Barker, the surety on the appeal bond of the defendant, John Wilcox, justified in open court to the amount of the appeal bond, to wit: the sum of twenty thousand dollars.

Clerk's Office, U. S. District Court, Eastern District of Louisiana.

I, Duncan N. Hennen, clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify the foregoing eighty-four pages to be a full and complete transcript of the record of the proceedings, evidence, pleadings, and documents, relating to the case of Clark, Hunt, and Phillips, trustees, &c. *vs.* John Wilcox et al., so fully as the same remains on file in this office.

Witness my hand, and the seal of the court this day of 1836.

DUNCAN N. HENNEN, cl'k.

I, Samuel H. Harper, judge of the United States District Court for the Eastern District of Louisiana, do hereby certify, that Duncan N. Hennen, who certified the foregoing eighty-four pages, is now, and was at the time of so doing, clerk of the said court of the United States for the Eastern District of Louisiana, that full faith and credit are due to his acts as such, and that said certificate is in due form of law.

Witness my hand and seal, this 3d day of June 1836.

[SEAL.] SAML. H. HARPER, Judge U. S.

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the Judge of the District Court of the United States for the Eastern District of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Chester Clark, Thomas Hunt, & Wells Phillips, trustees, &c., against John Wilcox, et al. a manifest error hath happened, to the great damage of the said John Wilcox et al. defendants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and

speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness, the honorable Joseph Story, senior associate justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States the sixtieth year.

[SEAL.] DUNCAN N. HENNEN, Cl'k.

Thomas Hunt, Wells Phillips, and Chester Clark, trustees of Wells Phillips, and others, greeting:

You are hereby cited and admonished to appear before the Supreme Court of the United States, to be holden at the City of Washington, being the place of the sessions of the said court, on the first Monday of August next, (1836) pursuant to a writ of error lodged in the clerk's office of the United States District Court Eastern District of Louisiana, to show cause if any you can, or have, why the judgment rendered in the case of Clark, Hunt, & Phillips, trustees, &c. *vs.* John Wilcox, et al., in the District Court of the United States for the Eastern District of Louisiana, should not be reversed, and why speedy justice should not be done to the parties in that behalf, and why the error complained of should not be corrected.

Witness my hand and seal, at New Orleans, this 3d day of June, A. D. 1836.

[SEAL.] SAML. H. HARPER, Judge U. S.

DISTRICT COURT OF THE UNITED STATES,
Eastern District of Louisiana.

CLARK, HUNT & PHILLIPS, trustees, &c.
vs.
JOHN WILCOX, et al.

Citation in error for Greer B. Duncan, Esq.

Received 3d June 1836.

Served copy of the within document, on G. B. Duncan, Esq., attorney for the plaintiffs, on the 6th day of June, 1836, in person, at the city of New Orleans.

J. H. HOLLAND,
Marshal Eastern District of Louisiana.

The General Rules for the government of the United States Court in the Eastern District of Louisiana, in civil causes, or suits at law, as contra-distinguished from admiralty and equity causes and criminal prosecutions. Made in pursuance of the 17th section of the Judiciary Act of 1789, and of the first section of the Act of Congress of the 26th May, 1824, entitled "An Act to regulate the mode of practice in the Courts of the United States for the District of Louisiana."

At a stated session of the Court of the United States of America, for the Eastern District of Louisiana, held at the city of New Orleans, on Monday, the fourteenth day of December, Anno Domini one thousand eight hundred and twenty nine.

Present, the honorable Samuel H. Harper, Judge of said Court.

Ordered, that the following rules be adopted by this court; and all other rules for the practice of this court are annulled from and after the present date.

General Rules.

Rule 1. Suits at law shall be commenced by writ or process, under the seal of the court, and signed by the clerk, and be tested in the name of the Judge (or if that office shall be vacant, of the clerk,) and shall issue in the name of the President of the United States, to the Marshal of the District, commanding him to arrest or summon the defendant (as the case may be) and shall be returnable on the first day of each term.

Rule 2. A petition addressed to the court, shall accompany the writ: it shall state the nature of the case with sufficient precision of circumstance, time and place, which petition shall be signed by the party or his counsel, and shall contain a prayer adapted to the nature of the case; and whatever documents are referred to in the petition as making part thereof, shall be filed with it, or if copies thereof are annexed, the defendant or his attorney shall have *oyer* of the original if he demand it, before he shall he required to file his answer or plea. The writ and petition being filed, a copy thereof shall be made in the French and English languages, (in cases where the mother tongue of the defendant is French) and together with the original writ or process, be delivered to the Marshal, who shall serve said copy on the defendant, by delivering the same to him personally, or by leaving it at his usual place of abode, ten days before the day of return mentioned in the writ, allowing one day in addition for every twenty miles the defendant may reside from New Orleans. The writ or process shall run in the words which have hitherto been adopted in this court. The Marshal shall, whenever any writ or process shall have been served, endorse on the same the time of service, and its distance from the city, if the same be made out of the limits thereof.

Rule 3. The answer or defence of the defendant shall be signed by him or his attorney, and filed with the clerk, in the English and French languages (if the mother tongue of the plaintiff be French,) on or before the first day of each term; and if no defence or answer shall be filed, nor time given for answer, the court shall at the first day of sitting thereafter, on the application of plaintiff, cause judgment by default to be entered against the defendant, which, if not set aside within three days thereafter, the court shall,

if required, enter up final judgment against the defendant, if the demand be liquidated by a note, bond, contract or former judgment, and if the sum demanded be uncertain, the court shall proceed to hear testimony, assess the damages, and render final judgment for the sum so assessed.

Rule 4. The answer shall contain nothing impertinent or irrelevant; but the defendant shall be required to plead all such matter of law and fact, in the same answer as he may think proper to rely on conformably to the rules of practice adopted by the first Judicial Court of the State of Louisiana, prior to the adoption of the "Code of Practice;" and in all cases where matters of law, and matters of fact are plead in the same answer, the pleas on points of law submitted to the court shall be argued and determined before the issues of fact shall be submitted to the jury.

Rule 5. The clerk shall keep a docket, in which all cases that are at issue, shall be entered in the following order:—1. Causes in which both issues to the court and to the country are made up. 2. United States' causes of a general nature and criminal prosecutions 3. Jury causes other than those of the United States. 4. Court causes or suits to be tried by the court alone. 5. All admiralty causes, (the U. S. admiralty causes having precedence on the list) and in setting the causes for trial they shall be called in the order thus prescribed.

Rule 6. All causes at issue, whether in point of law, or fact, shall be called on the second day of each term, at the meeting of the court, and set down for trial. In all cases in which pleas, both to the court and country, are made, the pleas involving matters of law, or issues submitted to the court alone, shall be first tried, and such of them as may be directed to be tried on the issues of fact, shall be immediately transferred to the jury docket, to be tried on the merits during the same term, in the discretion of the court. All cases in which dilatory or declinatory pleas or exceptions to form are made and overruled, the party making such plea, or pleas, or exceptions, shall pay to the plaintiff all costs of suit up to the time of their being decided against him; and when a plea is made to the jurisdiction of the court, involving the question of citizenship of a party, it shall be tried by a jury, and if the verdict sustains the jurisdiction, all costs shall be paid to the plaintiff, and the cause shall be immediately tried by the same jury on its merits, at the option of the plaintiff, if by the pleading it be a jury cause, if not, it shall be forthwith submitted to the court for decision.

Rule 7. If it be the intention of a party to take an issue on the fact, he must expressly pray for a jury, otherwise the cause shall be wholly tried by the court (except cases where the law itself requires a jury) and shall be put in the fourth class of cases on the docket.

Rule 8. When a jury is about to be sworn in a cause, each party may peremptorily set aside three of them, but no more, except for a legal cause.

Rule 9. The clerk shall enter no cause on the docket until the pleadings are fully made up, nor shall any cause be entered thereon except by the clerk or his deputy.

Rule 10. If any docketed cause shall be called at two courts and not tried, the plaintiff shall be called, and if he does not immediately go to trial, he shall be *nonsuited*, unless it shall appear that it had been continued at defendant's motion, or other satisfactory cause shall be shown to the court *on*

oath, to prove it was not postponed on account of the plaintiff's neglect, or unless the defendant at such second calling, shall obtain a further continuance; but nothing in this rule shall be construed to prejudice defendant's right of calling for a *nonsuit*, at any previous court.

Rule 11. If a cause is at issue and either party move for a continuance of it, on account of the absence of a witness, such motion must be on oath or affirmation of the party, his agent or attorney, in writing, subscribed by him, stating that some witness residing within the reach of the process of the court (who shall be named, and the place of his residence mentioned) is wanting: that he believes, that such witness is a material and competent witness in the cause, and to satisfy the court of his materiality, shall state what fact or facts, it is expected or believed the witness will prove on the trial; that all reasonable endeavors have been used to procure his attendance at the term, that he cannot safely go to trial without the benefit of his testimony, and that, a continuance is not prayed for the purpose of delay.

If an application be made for a continuance and also for a commission to procure evidence (the other party not consenting thereto) the affidavit must state what fact or facts it is believed will be proven on the trial of the cause, that the testimony sought is competent and material, that he cannot safely go to trial without the benefit of it; that he believes it can be procured in a certain time, which shall be specified, and that the application is not made for delay. If a commission issue, interrogatories must be filed, as directed in the following rule.

Rule 12. The clerk is authorized, in vacation, on the written application of the plaintiff or his attorney, to enter the discontinuance of a cause, and with consent of counsel, written, signed and put on file, to enter on the minutes, rules and orders preparatory to trial of causes pending therein; and to issue commissions to take testimony in all cases, at the instance of either party, and if it be not the intention of the party taking out the commission to take testimony *de bene esse* under the 30th section of the Judiciary Act of 1789, he shall file interrogatories and serve a copy thereof on the opposite party or counsel, who may, if he thinks proper, add cross interrogatories and return the whole to the other within three days, or in default thereof, the commission may be executed without the cross interrogatories.

Rule 13. No amendment shall be made to any petition or answer, unless it be made previous to setting the cause for trial, (except as to mere matters of form, which may be made at any time before trial) and no amendment shall be made at any time, tending wholly to alter the nature of the action or defence.

Rule 14. In all rules to show cause, the party called upon, shall begin and end his case, and on special matters, either springing out of a cause at issue or otherwise, the actor or party submitting a point to the court, shall in like manner begin and close; and so shall a defendant who admits the plaintiff's case and takes upon himself the burden of the proof, have the like privilege.

Rule 15. In all cases of affirmance of judgment on writs of error from judgments pronounced in this court, a rule may be taken on the principal and his sureties in the appeal bond, returnable ten days (after recording the mandate of the Supreme Court) to show cause why execution should not issue

against them, and no cause being shown, judgment shall be entered against them and the principal, and execution issue accordingly.

Rule 16. Upon the return of an award or umpirage, a three day rule shall be served upon the party or his attorney, against whom the award or umpirage may be, and should the same be confirmed by the court, judgment shall thereupon be entered and execution issue in the same manner as if judgment had been obtained on verdict.

Rule 17. Every motion made for any rule or order shall be submitted to the court in writing, by the counsel who makes it, and if granted by the court, shall be delivered to the clerk to be entered on the minutes.

Rule 18. Not more than two counsel shall be permitted to argue on the same side of a cause, without leave of the court.

Rule 19. All applications for new trials shall be made within three days after the verdict of the jury, or judgment of the court, (as the case may be) and if no such application be made, or being made, shall be overruled, judgment shall be signed, and execution issue, if required.

Rule 20. Counsellors and attorneys licensed by the Supreme Court of this State, may be admitted as such in this court, but no *attorney in fact*, shall be permitted to appear as an *attorney at law* to prosecute or defend any suit.

Rule 21. After the argument of a cause upon matters of law, submitted to the court, a statement in writing of the points relied upon and a note of the authorities cited, may be required of the counsel on both sides, by the court, before giving judgment thereon.

Rule 22. In all cases where a sum certain is sworn to be due from defendant to plaintiff, special bail shall be ordered; and in all other cases affidavit being made of the facts, the Judge (or in his absence the clerk) shall order the defendant to be held to bail, in such sum as he may think just; but no attorney at law shall be received as special bail.

Rule 23. The Marshal shall not be bound to serve any subpœna on a witness on the day on which the cause is set for trial, wherein such witness is required, unless specially directed to do so by the court.

Rule 24. It shall be the duty of the Marshal to summon juries according to law, to serve at each stated term of the court, and he, or his deputy, shall serve a written summons on each juror, expressing the day, hour and place at which he is to appear, and also whether he is to serve as a grand or a petit juror.

Rule 25. To all the writs of *venire*, issued for summoning jurors, the Marshal or his deputy shall make a return upon oath, written at length before the clerk of the court, and in the said return shall make one class of those who were summoned personally, a second class of those for whom summonses were left at their houses, and a third class of those who could not be found.

Rule 26. The clerk shall keep a book in which shall be entered the names of all persons who shall be summoned as jurors, and on every call of the names, shall note opposite each name the presence or absence of the juror, or if any juror once empanneled shall refuse or neglect to attend punctually every morning on the call of the pannel, unless previously excused by the court, he shall be cited to show cause why he should not be fined for

his default, and if he show no sufficient cause, he shall be fined or otherwise punished according to law.

Rule 27. All moneys paid into the court of the United States, or received by the officers thereof, in causes pending therein, shall be immediately, (that is, the day after that on which they shall be received) deposited in the Branch Bank of the United States, in the name and to the credit of said court; and that at each stated session of the court, the clerk thereof shall present an account to the court of all moneys remaining therein, subject to the order thereof, stating particularly on account of what causes said moneys are deposited, which account with the vouchers thereof shall be filed in court.

Rule 28. All notes and obligations and the gross amount of moneys arising from the sale of property, in pursuance of any order or decree of this court, shall be paid into court by the Marshal, to be deposited in the Branch Bank; and that an account of sales of such property, so disposed of, shall be filed in court at the same time: and that in the cases mentioned in this and the preceding rule, the costs and charges of the suit shall be taxed and first paid out of the moneys in court.

Rule 29. Money deposited in court pending a suit, shall not be delivered on bond to any party or person.

General Rules of Practice in Admiralty.

Rule 1. The material facts stated in a libel (except in case of a libel for seamen's wages or where the United States are libellants) must be sworn to by the libellant, his agent or attorney, before an order for admiralty process shall issue, and every *claim* must be sworn to in like manner, before filing the same.

Rule 2. When the process is *in rem;* and a party is also personally cited, the citation shall be made returnable at the same time with the warrant, to wit, in fourteen days; and when the proceeding is altogether *in personum* the process shall likewise be returnable in fourteen days.

Rule 3. In all cases of seizure and prosecution of any ship or vessel, goods, wares and merchandise, where the claimant may bond of right under the 89th section of the act of second March 1799, "to regulate the collection of duties on imports and tonnage," and in all other cases where the District Attorney is consenting to such bonding, the same may be done in the manner directed by the said section, the District Attorney naming the appraisers and approving the security.

Rule 4. The clerk, or in his absence, the deputy clerk, be and he is hereby appointed, a Commissioner, before whom appraisers of ships or vessels, or goods, wares and merchandise, seized for breaches of any law of the United States, may be sworn or affirmed.

Rule 5. Appraisers acting under the orders of the court shall be severally entitled to receive five dollars in each case wherein they may make an appraisement, to be paid by the party at whose instance the appraisement shall be made.

Rule 6. All appraisements and bonds taken in pursuance thereof shall be copied at length in a book to be kept for that purpose, and the originals filed in Court.

Rule 7. No vessel or merchandise in the custody of the Marshal, shall be released upon bond, until the costs and charges of the officers of the

court (so far as the same may have accrued) shall be paid by the party giving bond.

Rule 8. When property is in the hands of the Marshal, he shall be authorized from time to time, on motion to that effect, to sell so much of the same at public auction, after notice, as may be necessary to defray the costs and charges incident to the keeping of the same.

Rule 9. Moneys paid into court, shall not be paid out in pursuance of any decree of the same, upon which an appeal may be had, until ten days (exclusive of Sundays) shall have elapsed after such decree shall have been made, and when an appeal shall be entered, the appellant shall within ten days exclusive of Sundays, from the time of making the decree, give security for damages and costs, and if security shall not be given within that time, the decree may be executed as if there had no appeal been prayed for.

Rule 10. In proceedings touching seamen's wages, when a party is cited to show cause against the issuing of admiralty process, oath must be made of the service of such citation, in case the party cited does not appear, except the citation has been returned, as served by the Marshal, or his deputy.

Rule 11. No claim shall be filed after the expiration of monition, or return day of the warrant, without the leave of the court, or by consent of the parties libellant in writing and put on file.

Rule 12. In all cases in which the United States are libellants, the clerk is authorized to issue admiralty process without an order from the judge.

Additional Rules.

20*th March*, 1830.

1*st*. No denial of the allegation of citizenship made in a petition, nor any dilatory exception or plea in abatement involving matters of fact shall be allowed, unless verified by affidavit filed therewith by the counsel, agent, or party as to their belief of the truth thereof.

14*th June*, 1830.

2*d*. The testimony of witnesses given at the Bar, shall not be reduced to writing by the clerk of the court, or any other person in trials at law, as contradistinguished from admiralty and equity causes.

3*d*. Facts shall not be submitted to a jury in order to obtain a special verdict in any cause except by the consent of parties entered on record.

4*th*. No verbal agreements or arrangements of parties, or their counsel, touching any cause depending in this court, shall be deemed of any validity, or noticed in any way by the court.

28*th May*, 1831.

It is ordered, that the 12th Rule of the Rules of this Court relating to suits at law, be so amended as to allow *Plaintiffs* in all cases to take out commissions to examine witnesses after the return of service of process; the plaintiff's serving the defendant with a copy of his interrogatories, as heretofore required; and when defendant resides in the country, he shall be allowed in addition to the time now prescribed, one day for every twenty miles distance he may reside from the city of New Orleans; to file cross interrogatories; commissions on the part of *defendant* shall issue only after issue joined, and in conformity with the previous practice of this court.

A true copy from the records of the court.

F. W. LEA, Clerk U. S. Dist. Court.

New Orleans, 1st Dec. 1831.